

REMARKS

Applicant thanks the Examiner for the courtesy extended during a recent telephonic interview and for the Examiner's time and attention to the matters discussed.

As of this response, claims 1-16 are pending and no claim is presently canceled, withdrawn or amended. A Declaration under 37 CFR 1.131 by the inventor of the present application is filed herewith along with one or more supporting exhibits. Applicant respectfully traverses the rejection of claims 1-16 and requests reconsideration and allowance of all pending claims.

The Office Action mailed July 1, 2008 rejected claims 1-16 under 35 USC § 102(e) as being anticipated by Deichler, Jr. (US 6,708,604). Applicant has considered the Examiner's remarks and considered the relevance of the Deichler '604 patent. Applicant respectfully traverses the rejection as based on anticipation by the Deichler '604 patent by the submittal herewith of a Declaration pursuant to 37 CFR 1.131(b), which portion reads as follows:

The showing of facts shall be such, in character and weight, as to establish **reduction to practice prior to the effective date of the reference**, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

Applicant respectfully submits that the Declaration under 37 CFR 1.131 filed herewith, with exhibits, by the inventor or of the present application satisfies the requirements of 37 CFR 1.131(b) to establish invention and reduction to practice of the subject matter, to the extent allegedly anticipated by Deichler, of all of the pending claims prior to the effective date of the Deichler reference.

In summary of the attached affidavit and exhibits, the inventor attests that photographs of an embodiment of the subject invention, being used in various configurations and positively demonstrating the aspects recited in the presently pending claims, were taken well before the effective filing date of the Deichler '604 patent relied upon in the rejection. As the affidavit will show, the inventor fully recognized the desirable attributes of the presently claimed invention and, purposefully and by design, realized these attributes by implementing units at least as early as 2002 that conformed to the present claims. In the course of development and testing, the inventor personally, intentionally and on numerous occasions operated these early implementations to form various configurations as now described and claimed in the present application. The inventor craftily designed the unit to include a set of interchangeable panels, some of varying widths, that were selectively chosen and placed during assembly to form various in-use configurations. These panels were also compactable into a small space between the top and bottom covers for storage.

Applicant now covers a few points about the previously submitted affidavit.

As to the apparent loss of legibility of the photographs due to scanning or other processing by the Office, Applicant was unaware of the resolution limitations or other factors of this image processing and did not know that the quality impact would be so severe as reported by the Examiner. It would have been entirely appropriate for the Examiner, upon recognizing this impairment to properly evaluating the evidence, to have contacted Applicant to resolve the matter rather than 'blindly' issuing a rejection. Applicant was at a loss for how else to provide the photographic evidence and considered that the affidavit would benefit by the submission of the actual photographs in comparison to a bare declaration as to the existence and significance of the photographs without the photos themselves.

In a sincere effort to make the evidence more presentable, Applicant herewith submits another Declaration under 37 CFR 1.131 showing the same photographs as before but also providing line drawing versions of the photographs. For purposes of

ensuring that the essential content of the photographs is preserved during copying and scanning and to provide high contrast line drawings suitable for the permanent record of the Office, Exhibit ‘A’ now includes black-and-white contrast line renderings derived from the photographs using a common photograph processing software application. These renderings, while coarse in appearance, are derived from the photographs without any adulteration or manual manipulation other than the image processing applied to the entire image, as well as cropping or resizing. Some of these contrast line renderings appear both with and without additional labels to aid in explaining important features while also affording an unmodified view of the rendering.

Applicant respectfully requests that the Examiner carefully review the attached Declaration under 37 CFR 1.131 and the attached exhibit sheets, especially considering that the text of the presently submitted Declaration has changed substantially from the previously submitted one. Applicant has painstakingly highlighted where and how specific claim recitations are substantiated in the photographs from 2002.

On top of page 5 in the recent Office Action, the Examiner addresses Sheet 2 of Applicant’s exhibits previously submitted and mentions the text in what was formerly paragraph 6(c). Indeed, Applicant realizes that there was a typographical error and that paragraph 6(c) should have referred to Sheet 3. It was Sheet 3 that showed the assembled unit forming a space substantially closed on all sides as might be appropriate for baking or smoking.

On page 5 of the recent Office Action, second paragraph, Examiner makes an issue of Applicant’s statement in the previous affidavit that “A rectangular frame is shown in this implementation, although other shapes could easily have been formed by employing a different quantity of, and/or appropriately designing of, the side panels that form the frame.” The real point of this photograph was expressed by the first sentence in this paragraph, namely that the rigidly assembled, self-supporting frame was clearly separable from the top and bottom parts and not reliant upon the top or bottom for support. In the second sentence, Applicant merely reiterated the contemplation, as

described in Applicant's specification at paragraph [0037], that other shapes could have been designed for the unit, rather than addressing any ability of the one unit to change shapes. This remark has been removed in the present version of the Declaration. Note also that Deichler is not anticipative in this regard either. Deichler offers no teaching as to rearranging how the parts of a single unit are to be assembled to create a structure having a different overall shape, aspect ratio or the like.

In addressing other portions of the previously filed affidavit, Examiner chooses to interpret 'could easily have been' as being indicative of hindsight recognition by Applicant of the attributes or advantages of this early implementation. On the contrary, when Applicant said that certain aspects 'could have been', Applicant meant that, at that time, the unit shown was equipped and fully capable to perform the particular function. In other words, at the time the photographs were taken in 2002, a user of the unit was able to, by virtue of its design, perform the touted function. The unit was in every way adequately equipped, as shown in 2002, to perform as expressed in the claims and this was achieved in the unit by intentional design and full recognition by the inventor of the desirability of these aspects of the invention and how to achieve them. This intended meaning by Applicant is more clearly stated in the present affidavit.

Turning now to the question of whether Deichler's teachings would even anticipate Applicant's claims were it not for Applicant's early reduction to practice, Applicant maintains that the present claims are distinct from Deichler. In general, Applicant's invention concerns the ability to vary the configuration, during construction of the unit in such a way as by selecting whether to include or exclude panels and by determining where to place the panels in the assembly. Deichler does not teach any aspect of being able to selectively include or exclude panels that form a side of the structure and which affect the enclosed volume of the heated space. Deichler in fact teaches away from the notion of parts to include or exclude (col 2: 3-10; col 3:12-15; col 7:12-14) by stressing the importance of keeping all parts coupled in a fixed fashion for fast deployment and to avoid loosing loose parts. Understandably, this could be especially important in the context of canoeing or rafting expeditions. Deichler does not

teach any aspect of letting a user alter where different pieces fit into the overall assembly. All of the rotational engagements among members in Deichler's structure are characterized as permanent attachments and with good reason.

In stark contrast, Applicant's specification and claims emphasize the configurability of the panels forming a side by the user choosing, during assembly, which panels to use, how many to use and where to attach them in the assembly. Pending claim 1 emphasizes, for example, "panels forming sides" and "a side of the frame comprising a variable configuration of panels." Applicant contends that Deichler's doors [34],[36], if argued to equate to the recited panels, do not effectively form a side of the frame (as explained further below) and are not able to be reconfigured in any way other than as they were originally attached during manufacture using a piano hinge or the like.

All of the dependent claims 2-16 are also differentiated from Deichler at least by virtue of this recited variable configuration of panels that truly 'form' a side of the frame.

Pending claim 2 specifies that two panels are coupled to each other to erect the frame and are detached to collapse the frame. The erection of a structure according to Deichler is independent of the doors being latched or unlatched. The point where a door [34] latches to a side wall [14] is presumably where the Examiner is construing a first panel coupling to a second panel. Assuming that the hinged doors of Deichler were construed as configurable panels, then the frame is shown to be erect solely by virtue of support brackets [44],[50] even when the doors are unlatched. Diechler (col.4:4-7) states clearly that the "Support brackets ... are all that is required to restrain the device in the square configuration...". In fact, the support brackets are apparently necessary for the doors to operate as explained by Deichler (col.5:49-52) in saying "With the brackets 44 and 50 in place, the folding center section assembly 12 is held in a substantially rigid extended configuration allowing the doors to open freely." The doors are non-essential to forming a rigid frame and, by virtue of the support brackets, the frame is intact with all sides having been formed even without the doors engaged.

Pending claim 4 recites that the side of the frame is “selectively configured by selectively employing a panel having a particular physical dimension”. The unit taught by Deichler does not allow a user to decide whether or not to employ in the assembly a given panel. All doors of Deichler are always attached as determined at the time of manufacture and a given door can only be closed over a given portion of the structure.

Pending claim 6 recites that the side of the frame “is selectively configured by selectively choosing among, in constructing the side, a first panel having a first measurement in a given dimension and a second panel having a second measurement in the dimension...” This claim clearly recites that the user constructs the side and chooses one panel versus another. In Deichler, opening and closing doors by the user is not ‘constructing the side’ in any sense and is not exercising a decision to include in the construction one panel or another, different-sized panel. Again, the doors in Deichler’s unit are of fixed size and arrangement as determined during manufacture and the user is not able to arbitrarily include or exclude a door in the assembly.

Applicant further highlights that Deichler characterizes doors [34] and [36] as “access doors” (col 5:20) and fails to suggest in any way that they be set open or closed in various patterns to adapt or configure the device for different cooking applications. Rather, the whole of the specification of the ‘604 patent implies that the doors normally remain closed and the top and bottom remain tightly in place throughout the time when the unit is used for smoking, baking or barbequing.

Applicant’s approach of using separate panels rather than fixed doors offers advantages that are useful in some applications. This approach allows finer control of opening sizes and grill height without sacrificing rigidity of the frame. (See an example of this in the accompanying Declaration at lines 181-184.) With Deichler’s approach, the grill height is not controlled by the doors and trying to control the degree of side enclosure to within, for example, one-half inch would require a large number of flimsy slender doors be used, proving impractical. Furthermore, as mentioned in Applicant’s

specification (para. 0030), the loose panels not included in the frame assembly for a given configuration can meanwhile be used for other purposes.

Deichler's doors merely swinging opened and closed do not amount to 'configuring' as Applicant has described and claimed. It is doubtful that Deichler's doors can even be said to 'form a side' given that the rigidity of the unit is ensured not by the doors but by separate support brackets [44],[50]. Deichler's structure is apparently sturdied by putting these bands in place (Deichler col 4:4-7). Otherwise, the side walls [14],[18] are subject to flapping apart from one another which would allow the water tray, firebox or grill to fall down. Rigidity of the structure is thus quite independent of the doors, the mere opening or closing of which the Examiner apparently believes equates to Applicant's configuring of panels. In Deichler, the frame is already formed of the walls and support brackets before the doors even come into play. The support brackets of Deichler are of fixed location and are slender enough to not contribute to creating any substantial degree of enclosure.

Furthermore, neither the support brackets nor the doors of Deichler support the transverse member or grill [68] in any way as required by Applicant's claim 12. The Office fails to address this deficiency. Applicant's Claim 12 stipulates that the side of the frame that is configurable comprises panels that support the transverse member. Deichler lacks this aspect entirely in that the doors [34],[36] have no engagement whatsoever with the grill. Instead the access doors are swung open and the grill is slid in or out of slides [66]. Neither does the transverse member significantly rigidify the frame as required in Applicant's claim 16. Given the description of its placement into slides [66](col6:5-24), the transverse member [68] of Deichler does not prevent the walls of the structure from being distorted torsionally nor does it hold the side walls to keep them from separating outwardly. The transverse member does not engage so as to keep the adjoining walls at right angles to one another. As Deichler fails to show any engagement between the doors and transverse member, much less does Deichler fulfill Applicant's claim 13 specifying that the panel comprises a first feature that engages with a mating second feature of the

transverse member. Thus, Deichler clearly does not teach any of the key aspects of claims 12, 13 and 16.

In the recent Office Action, the explanation of the particular grounds of rejection are noticeable lacking and interfere with Applicant's ability to fairly respond to the grounds of rejection. The Examiner provides an omnibus paragraph touching upon all of the claims, but many of the key limitations are overlooked and some of the cited portions from the reference appear to be unrelated to the point the Examiner attempts to make. Aside from the issues already discussed, Applicant takes exception with the following passages in the paragraph that spans pages 2-4 in the recent Action.

On page 2, where this paragraph states that Deichler discloses the a first panel being detachably coupled to a second panel, reference is made to FIG 1. The only couplings between adjacent panels shown in FIG 1 is purely by virtue of a fixed hinge. There is no evidence of any detachable coupling nor does the Examiner explain which panels in this figure are construed as the respective first and second panels or where the detachable coupling is taught in Deichler.

Continuing further, the remarks about "detachable coupling substantially along their adjacent edges" point to Deichler's figures 3 and 4. However, these two figures, again, show nothing other than permanently coupled hinged attachments.

In the next portion of the paragraph which continues onto page 3 of the Action, relating to the position of a panel affecting the attribute of the enclosure, the remarks point to col. 5:40-52 of Deichler. However, this passage solely concerns the support brackets and their role in the structure.

Further down page 3, the remarks apparently directed at pending claim 6 point to col. 4:1-20 as allegedly showing the limitation as to selectively choosing, in constructing a side, between a first panel having a first measurement and a second panel of a different measurement. This passage of Deichler lacks any indication of choice by a user of any

sort and lacks any description as to parts having different dimensions. The passage appears to be entirely unrelated.

At the bottom of page 3, reference is made to col. 4:63 through col. 5:10 of Deichler, apparently in conjunction with Applicant's claim 10. This passage is errant in two ways. First of all, there is no evidence of any support of a transverse member by any of the selectively employed panels. Secondly, if anything, this passage is indicative of the inability of a user to change anything. This passage stresses the important of having all parts permanently hinged in a fixed arrangement.

Finally, on page 4, the remarks concerning Applicant's claim 13 allege that Deichler's figures 2 and 3 demonstrate a panel comprising a first feature that engages with a mating second feature of the transverse member. Oddly, neither of these figures even shows a transverse member. The cursory remarks provide no guidance as to where the corresponding mating features are supposedly found in Deichler.

In the recent Office Action, the Examiner alludes to the prospect of an interference between the present application and the Deichler reference. Applicant has carefully considered this comment and remains convinced that an interference is inapplicable and inappropriate in view of the two documents. The essential criteria expressed in 37 CFR 41.203 as to mutual anticipation or obviousness is not met by the respective sets of claims. Furthermore, neither of the claim sets could hope to find support in the opposing specifications were one to try to copy a claim as is commonly done to incite an interference.

On the whole, despite being in similar fields of invention, Applicant's teachings and Deichler's teachings diverge. For example, the present Applicant describes how to vary configuration during assembly and to use the same panels to serve both as rigid walls and as enclosures around a heated space. Often a given panel also serves a third role of supporting a grill. In contrast, Deichler emphasizes a fixed-arrangement, integral structure wherein doors that can enclose a heated space are separate from the other fixed-

position elements that provide the main structural support. Furthermore, neither the doors nor the support brackets in Deichler are ever involved in supporting a grill.

Applicant respectfully submits that, in every way that the teachings of Deichler that the Office could allegedly anticipate Applicant's claims, Applicant has provided in the attached Declaration under 37 CFR 1.131 clear and undeniable evidence of having reduced to practice implementations of the claimed subject matter well before the effective date applicable to the Deichler '604 patent. Furthermore, Applicant has pointed out recitations in the presently pending claims that are completely lacking in Deichler and for which the Office has failed to establish anticipation with any particularity or effectiveness.

CONCLUSION

Applicant respectfully requests that the Examiner reconsider the outstanding rejection and that it be withdrawn. Applicant respectfully requests consideration of the Declaration under 37 CFR 1.131 filed herewith to the extent it may address any basis of rejection by which the Deichler patent might have been considered by the Examiner to anticipate the invention and reduction to practice of the presently claimed invention by the Applicant. Applicant believes that a full and complete response has been made to the recent Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of these remarks are respectfully requested.

Respectfully submitted,



Donna Gail Schneider

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5880 Derby Rock Loop
Manitou Springs, CO 80829
(719) 685-4700